



Minutes

Supreme Court's Advisory Committee on the Utah Rules of Appellate Procedure

Administrative Office of the Courts
450 South State Street
Salt Lake City, Utah 84114

In Person and by WebEx Videoconference
Thursday, May 4, 2023
12:00 pm to 1:30 pm

PRESENT

Emily Adams
Christopher Ballard – Chair
Troy Booher –
Emeritus Member
Carol Funk
Tyler Green
Amber Griffith – Staff
Judge Michele M.
Christiansen Forster

Judge Gregory Orme
Stanford Purser
Clark Sabey
Scarlet Smith
Nathalie Skibine
Nick Stiles – Staff
Eric Weeks – Guest

EXCUSED

Patrick Burt
Lisa Collins
Michael Judd –
Recording Secretary
Michelle Quist
Mary Westby

1. Action: **Chris Ballard**
Approval of April 2023 Minutes

The Committee reviewed the April 2023 minutes and no changes were suggested.

Judge Christiansen Forster moved to approve the minutes. Stan Purser seconded that motion, and the minutes were unanimously approved.

**2. Action:
Rules 4**

Chris Ballard

Chris Ballard reported to the Committee they had submitted the rule to the Supreme Court for final approval regarding the addition of a deadline for filing the motion to reinstate an appeal in a criminal case. During the discussion with the Supreme Court, Justice Hagen had pointed out that the rule didn't provide any way for the prosecution, who now has the burden, to show proof that the delay was unreasonable.

Nathalie Skibine expressed a couple issues that she had with the new proposal. The first issue is putting the delay solely on the defendant's attorney. The second issue Ms. Skibine had was with the date requirement, as it is hard to keep track of dates while in prison. Ms. Skibine suggested simplifying the language. Emily Adams agreed. Clark Sabey suggested allowing a broader timeframe for the date, so instead of the specific date the defendant could include the month and year. Mr. Ballard disagreed and believes the date, that the defendant learned their appeal was not progressing, is necessary. However, Mr. Ballard did agree that the failure is not always on the attorney.

The Committee then discussed and made changes to the proposed language.

After those changes were made, Clark Sabey moved to approve the Rule as it was shown on the screen. Judge Orme seconded that motion and the rule was unanimously approved with no objections. The rule will be presented to the Supreme Court for approval to be published for public comment.

**3. Action:
Rule 5**

Stan Purser

Stan Purser presented proposed amendments to Rule 5. It is Mr. Purser's understanding that in interlocutory appeals the courts have been requesting the record from the trial court. Mr. Purser's proposal reflects this so that parties know what will occur.

Nathalie Skibine raised a concern that the rule was just recently modified in the past few years to the way it currently is, in an effort to make the appeals go faster.

Carol Funk raised a question about the section regarding transcripts. Ms. Funk explained that in other appeals the parties are not told which transcripts they have to order, and it is up to the appellant to prepare the record how they would like. Ms. Funk proposed that the language be modified so the appeal would work the same as other appeals, just with a shorter timeline to order the transcripts. The Committee agreed and discussed how to phrase this in the rule.

Ms. Funk raised an additional question regarding the five day timeline. Ms. Funk wondered if we need this rule to have expedited ordering of the transcripts because it's an interlocutory appeal. The members expressed that Lisa Collins and Mary Westby would be able to answer this question, but they were unable to attend the meeting. The Committee ultimately decided to direct the parties to Rule 11 and have them follow the guidelines outlined in that rule.

Scarlet Smith then moved to tentatively approve the rule as it was shown on the screen pending Lisa Collins and Mary Westby's input. Emily Adams seconded that motion. No objections were made and the motion passed.

4. Action: Stan Purser
Rule 27

The Committee discussed the two proposals presented by Stan Purser to amend Rule 27. Emily Adams questioned what information was necessary in the caption or if less is better. Judge Orme explained that sometimes he is able to easily determine if he has a conflict based on the caption and who are the parties and trial judge involved in the case. Scarlet Smith asked if all counsel need to be listed on the cover page as sometimes this makes the cover page run onto a second page. Additionally Ms. Smith wondered if only the attorney who filed the brief could be listed, then additional attorneys can be listed on the second page. Judge Orme agreed and believed that would be helpful. The language requiring opposing counsel's information to be listed on the cover was then removed from the proposal.

Carol Funk asked why there should be different captions for motions and petitions; could the same caption be used? Mr. Purser believed that would still be an option as there is not a requirement to not include information, nor would it be an issue to use the same caption. The intention of the proposal is to clarify that people don't have to use the same caption. Ms. Funk then asked if there are any circumstances where the motion would be filed first. If so, then the court wouldn't have the information that comes with a petition. Emily Adams listed a few examples of motions that are filed prior to the petition.

Following those discussions Emily Adams moved to table the proposal until the June meeting so the Committee could hear Lisa Collins' input. Scarlet Smith seconded the motion and it passed without objections.

5. Action: Scarlet Smith
Rule 4(b)

Scarlet Smith introduced the proposed amendments to Rule 4 paragraph (b). Ms. Smith explained that there is some ambiguity for using the term any and that individuals may view that to mean that they need to file a petition to

appeal after every motion is disposed.

Clark Sabey questioned if there is an issue with Rule 73. Mr. Sabey noted that the rules have been structured so that parties know by the end of day 29 post judgment, that they are done. But looking at Rule 73 there may be an exception to the 14 day. Ms. Smith believes it is only an issue when we refer to these as post judgment motions.

Due to time constraints Carol Funk moved to table this item until June. Stan Purser seconded that motion and it passed with no objections.

**6. Action:
Old/New Business**

Chris Ballard

Chris Ballard discussed the Committee's meeting schedule moving forward, and brought up that the Committee typically takes a summer hiatus. The Committee decided to meet in June, but will cancel the July and August meeting.

With that decision made, Chris Ballard declared the meeting to be adjourned.